

Amendment No. 3 to SB1967

McNally
Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1967

House Bill No. 1835

by deleting all language after the caption and by substituting instead the following:

WHEREAS, The General Assembly of the state of Tennessee finds that reducing violent crime would greatly improve the safety and well being of all Tennesseans;

WHEREAS, The General Assembly takes notice of significant decreases in violent gun crime in other states following enhancement of punishment for repeat violent criminal offenders;

WHEREAS, The General Assembly recognizes that legal possession and use of firearms is a protected and highly valued fundamental right of Americans but illegal possession and use of firearms is a major component of violent crime;

WHEREAS, The General Assembly has determined that focusing on the most hardened, violent, unrepentant criminals, terrorists, predators and rapists who endanger the public by committing crimes using guns is a logical way to improve government's performance in the area of public safety; and

WHEREAS, The General Assembly finds that protecting public safety and preserving order is a primary obligation of government and essential for the continual improvement of education, orderly delivery of healthcare, efficient transaction of commerce and preservation of freedom; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, Part 13 is amended by adding the following as a new section:

§ 39-17-1324.

(a) It is an offense to possess a firearm with the intent to go armed during the commission of or attempt to commit a dangerous felony.

(b) It is an offense to employ a firearm during the:

(1) Commission of a dangerous felony;

(2) Attempt to commit a dangerous felony;

(3) Flight or escape from the commission of a dangerous felony;

or

(4) Flight or escape from the attempt to commit a dangerous felony.

(c) A person may not be charged with a violation of subsection (a) or (b) if possessing or employing a firearm is an essential element of the underlying dangerous felony as charged. In cases where possession or employing a firearm are elements of the charged offense, the state may elect to prosecute under a lesser offense wherein possession or employing a firearm is not an element of the offense.

(d) A violation of subsection (a) or (b) is a specific and separate offense, which shall be plead in a separate count of the indictment or presentment and tried before the same jury and at the same time as the dangerous felony. The jury shall determine the innocence or guilt of the defendant unless the defendant and the state waive the jury.

(e)

(1) A sentence imposed for a violation of subsection (a) or (b) shall be served consecutive to any other sentence the person is serving at the time of the offense or is sentenced to serve for conviction of the underlying dangerous felony.

(2) A person sentenced for a violation of subsection (a) or (b) shall not be eligible for pretrial diversion pursuant to title 40, chapter 15, judicial diversion pursuant to § 40-35-313, probation pursuant to § 40-35-303, community correction pursuant to title 40, chapter 36, participation in a drug court program or any other program whereby the person is permitted supervised or unsupervised release into the community prior to service of the entire mandatory minimum sentence imposed less

allowable sentence credits earned and retained as provided in § 40-35-501(j).

(f) In a trial for a violation of subsection (a) or (b), where the state is also seeking to have the person sentenced under subsection (g)(2) or (h)(2), the trier of fact shall first determine whether the person possessed or employed a firearm. If the trier of fact finds in the affirmative, proof of a qualifying prior felony conviction pursuant to this section shall then be presented to the trier of fact.

(g)

(1) A violation of subsection (a) is a Class D felony, punishable by a mandatory minimum three (3) year sentence to the department of correction.

(2) A violation of subsection (a) is a Class D felony, punishable by a mandatory minimum five (5) year sentence to the department of correction, if the defendant, at the time of the offense, had a prior felony conviction.

(h)

(1) A violation of subsection (b) is a Class C felony, punishable by a mandatory minimum six (6) year sentence to the department of correction.

(2) A violation of subsection (b) is a Class C felony, punishable by a mandatory minimum ten (10) year sentence to the department of correction, if the defendant, at the time of the offense, had a prior felony conviction.

(i) As used in this section:

(1) "Dangerous felony" means:

(A) Attempt to commit second degree murder as defined in §§ 39-13-210 and 39-12-101;

(B) Voluntary manslaughter as defined in § 39-13-211;

- (C) Carjacking as defined in § 39-13-404;
- (D) Especially aggravated kidnapping as defined in § 39-13-305;
- (E) Aggravated kidnapping as defined in § 39-13-304;
- (F) Especially aggravated burglary as defined in § 39-14-404;
- (G) Aggravated burglary as defined in § 39-14-403;
- (H) Especially aggravated stalking as defined in § 39-17-315(d);
- (I) Aggravated stalking as defined in § 39-17-315(c);
- (J) Initiating process to manufacture methamphetamine as defined in § 39-17-435;
- (K) A felony involving the sale, manufacture, distribution or possession with intent to sell, manufacture or distribute a controlled substance defined in title 39, chapter 17, part 4; or
- (L) Any attempt, as defined in § 39-12-101; to commit a dangerous felony.

(2) "Prior conviction" means, for purposes of this section, that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of a dangerous felony prior to or at the time of committing dangerous felony on or after January 1, 2008.

(3) "Prior conviction" includes convictions under the laws of any other state, government or country which, if committed in this state, would constitute a dangerous felony. If a felony offense in a jurisdiction other than Tennessee is not identified as a dangerous felony in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for a dangerous felony.

(4) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104 (c)(3)—(9). A dangerous felony shall be considered as having been committed after a separate period of incarceration or supervision if the dangerous felony is committed while the person was:

(A) On probation, parole or community correction supervision for a dangerous felony;

(B) Incarcerated for a dangerous felony;

(C) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for a dangerous felony; or

(D) On escape status from any correctional institution when incarcerated for a dangerous felony.

SECTION 3. Tennessee Code Annotated Section 39-17-1307, is amended by deleting subsection (c) in its entirety and substituting instead the following:

(c)

(1) A person commits an offense who possesses a deadly weapon other than a firearm with the intent to employ it during the commission of, attempt to commit or escape from a dangerous offense as defined in § 39-17-1324.

(2) A person commits an offense who possesses any deadly weapon with the intent to employ it during the commission of, attempt to commit, or escape from any offense not defined as a dangerous offense by § 39-17-1324.

(3) A violation of subsection (c) is a Class E felony.

SECTION 4. Tennessee Code Annotated, Section 40-35-501, is amended by adding the following new subsections to be designated as (j) and (k) and by relettering existing subsections accordingly:

(j) There shall be no release eligibility for a person committing a violation of § 39-17-1324(a) or (b) on or after January 1, 2008, until such person has served one hundred percent (100%) of the minimum mandatory sentence established in such section and imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce the mandatory minimum sentence imposed by the court by more than fifteen percent (15%).

(k)

(1) There shall be no release eligibility for a person committing aggravated robbery, as defined in § 39-13-402, on or after January 1, 2008, if such person has at least one (1) prior conviction for aggravated robbery, as defined in § 39-13-402, or especially aggravated robbery, as defined in § 39-13-403. The person shall serve one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%).

(2) "Prior conviction" means, for purposes of this section, that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of an aggravated robbery or especially aggravated robbery prior to or at the time of committing an aggravated robbery on or after January 1, 2008.

(3) "Prior conviction" includes convictions under the laws of any other state, government or country which, if committed in this state, would constitute the offense of aggravated robbery. If an offense involving a robbery accomplished by use of a firearm in a jurisdiction other than Tennessee is not identified as aggravated robbery or especially aggravated robbery in this state, it

shall be considered a prior conviction if the elements of the felony are the same as the elements for aggravated robbery or especially aggravated robbery.

(4) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104 (c)(3)—(9). An aggravated robbery shall be considered as having been committed after a separate period of incarceration or supervision if the aggravated robbery is committed while the person was:

(A) On probation, parole or community correction supervision for an aggravated robbery or especially aggravated robbery;

(B) Incarcerated for an aggravated robbery or especially aggravated;

(C) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for an aggravated robbery or especially aggravated robbery; or

(D) On escape status from any correctional institution when incarcerated for an aggravated robbery or especially aggravated robbery.

SECTION 5. Tennessee Code Annotated, Section 40-2-101, is amended by adding the following new subsection (i):

(i) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2007, that constitutes a criminal offense under the provisions of § 39-13-531 or § 39-13-532, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

SECTION 6. Tennessee Code Annotated, Section 40-39-202, is amended by adding the following new subdivision (O) to item (25) and by relettering accordingly:

(O) Statutory rape by an authority figure, under § 39-13-532.

SECTION 7 Tennessee Code Annotated, Section 39-13-506, is amended by deleting subsection (b) and substituting instead the following:

(b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or

(2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.

SECTION 8. Sections 1, 2, 3 and 4 of this act shall take effect on January 1, 2008. Section 5 of this act shall take effect on July 1, 2007, the public welfare requiring it. Sections 6 and 7 of this act shall take effect upon becoming a law, the public welfare requiring it.